149 U.S. 773
Loch. def's brief

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

NOVEMBER TERM, 1892.

No. 85.

THE FORT PAYNE COAL AND IRON COMPANY, APPELLANT,

vs.

A. L. SAYLES ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 22, 1892.

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a UNITED STATES OF AMERICA, *Fifth Judicial District.*

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit begun and held, pursuant to law, in the court-room of said court, in the city of New Orleans, State of Louisiana, on the third Monday, being the 21st day, of November, 1892.

Present and presiding, Honorable Don A. Pardee, United States circuit judge for fifth judicial circuit; present, also, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable James W. Locke, United States district judge for the southern district of Florida.

FORT PAYNE COAL & IRON CO., Appellant,
vs.
A. L. SAYLES *et als.*, Appellees.

Be it remembered that heretofore, to wit, on the 22nd day of October, 1892, the transcript of the record of the above-styled cause in the United States circuit court for the northern district of Alabama was filed in the office of the clerk of the United States circuit court of appeals for the fifth circuit in the words and figures following, to wit:

1 *Original Bill.*

In the Circuit Court of the United States, Southern Division of the Northern District of Alabama.

A. L. SAYLES, R. P. KINGMAN, HENRY A. YEATON, CHARLES H. Garrett, John Conlon, Benjamin Kennard, Albert E. Rand, Asa Walker, C. H. Snow, R. L. Snow, William Ward, F. R. Garrett, Asa A. Yeaton, S. Liebman, Winifred Yeaton, H. B. Pierce, Charles A. Eaton, Horace B. Parker, and George Bilbrick

versus

FT. PAYNE COAL AND IRON COMPANY, OLD COLONY TRUST COMPANY, A. B. Green, A. J. Butler, Citizens' Bank and Trust Company, and G. N. Hensen.

To the judges of said court:

Your orators, A. L. Sayles, of Pascoag, R. I.; R. P. Kingman, Brockton, Mass.; Henry A. Yeaton, Charles H. Garrett, John Conlon, Portsmouth, N. H.; Benjamin Kennard, Elliott, Me.; A. E. Rand, Asa Walker, C. H. Snow, R. L. Snow, William Ward, F. R. Garrett, Asa A. Yeaton, S. Liebman, Winifred Yeaton, Portsmouth, N. H.; H. B. Pierce, Abington, Mass.; Horace B. Parker, residence unknown; Charles A. Eaton, Brockton, Mass.; George Bilbrick, Portsmouth, N. H. Exhibit this their bill of complaint against the

Ft. Payne Coal and Iron Company, corporation organized under the laws of the State of Alabama, and located and having its principal office in the city of Ft. Payne, De Kalb county, Alabama, in said division and district, the Old Colony Trust Company, a corporation in Massachusetts, with office in Boston, A. B. Green and A. J. Butler, citizens of Ft. Payne, Ala., the Citizens' Bank and Trust Company, a corporation of Tennessee, with principal office in Chattanooga, and G. N. Hensen, a citizen of Chattanooga, Tenn.

1. Your orators show that the Ft. Payne Coal and Iron Company was organized on or about the 22d day of November, 1888;
2 that the petitioners for incorporation were R. H. Person and W. J. Cameron, both of Birmingham, Ala., and W. P. Rice, residence then unknown, but now of Ft. Payne, Ala.; that the capital stock was fixed at $5,000,000, being divided into 50,000 shares of the par value of $100 each, that $4,000,000 of said stock was subscribed and paid for at $25 per share by nearly 1,800 people, resident in various portions of New England, for the most part and elsewhere, that $1,000,000 in cash was thus raised, and the remaining 10,000 shares of said stock was reserved in the treasury of said company, that $750,000 cash was paid for some 25,000 acres of mineral land and mineral rights in De Kalb county, Ala., and properties in and about Ft. Payne, that the company started with $250,000 cash in its treasury, that at the organization of said company W. P. Rice, who had been its chief promoter, was elected president; that the business of said company was to be the development of the large area of coal and iron land aforesaid and the building up of a manufacturing city at the town, or village of Ft. Payne, the county-seat of De Kalb county; that on or about the 1st day of February, 1889, active business was begun in said town and enterprises of great pith and moment set on foot, as the building of hotels, laying out of streets, construction of a railroad, development of coal and iron resources, establishment of water works, projecting of large manufacturing plants of various kinds, and, in fine, all such other things as tended, when completed, to make a city equipped with modern conveniences and utilities, and with power of self-sustenance; that with money in its treasury and large additions made thereto from sale of town lots at good prices, stimulated by the great activities of the company, its affairs for a season looked prosperous.

2. That towards the end of the year 1889 the excitement consequent upon the heavy investments, both by the company and individuals in and about Ft. Payne had for the most part subsided, and the expenditures of the company had been and continued so large that on May 1, 1890, the coal and iron company had run up an indebtedness of $256,200, and it became necessary to market the 10,000 shares of stock in the treasury; that on and after May 31, 1890, 9,541 shares of said stock were sold for $37 per share,
3 $356,017 in cash thus being realized for the company, of which amount $66,787 were paid to W. P. Rice, then a director of said company, as a commission for selling the same; that there remained unsold 659 shares, but whether yet in the treasury or not your orators are not informed.

3. But notwithstanding this sale of stock, the affairs of the company were not materially benefitted, for about six months thereafter, on January 31, 1891, following, the company had a current indebtedness of $205,436.24, as appears from a statement made by said company, hereto annexed, and marked Exhibit "A," and it became necessary to raise more money.

And your orators show that the said coal and iron company, on or about the 25th day of February, 1891, executed to the Old Colony Trust Company, as trustee, a mortgage upon the greater portion of its property, a copy of which is hereto attached, marked Exhibit "B," omitting full verbal description of property conveyed, to secure $300,000 of bonds duly authorized, a copy of one of which bonds appears in the copy of the mortgage, and that thereafter $212,000 of said bonds were sold at or near the par value thereof, but that the remainder of the issue have not been sold, but have been hypothecated for debts previously contracted or loans thereafter made, in the proportion often of $3 of bonds for $1 of debt or loan.

4. That despite said issue of bonds, and sale and hypothecation thereof, the affairs of said company were not materially improved, but grew from bad to worse, as evidenced by verbal statement made in Boston on July 13, 1892, by W. P. Rice, now president of the company, when he stated that its present debt was about $350,000, whereby it appears that though money was raised by the sale of bonds, sufficient to pay off the debts of said company, amounting on January 31, 1891, according to its own statement, to $205,336.34, and to have left over nearly $100,000 of said bonds, yet in fact the said company in a little more than a year, was again confronted with an unliquidated or current debt of nearly $150,000, and in most miserable straits, as will appear below. This increase
4 of debts was brought about, though for more than twelve months affairs of said company have been practically at a standstill, its coal and iron mines were not operated, the business of its railroad amounted to next to nothing, and all was complete stagnation, save here and there small activities were kept up at expense and loss to the company.

5. Your orators further show that on the 12th of April, 1892, the Chattanooga National Bank, of Chattanooga, Tenn., petitioned your court to appoint a receiver for the Fort Payne Coal and Iron Company, as well as for the Fort Payne rolling mill, but that proceedings against the coal and iron company were stopped by W. P. Rice, the president agreeing to turn over to the Chattanooga National bank, in satisfaction of its claim, of about $8,000 certain properties belonging to the coal and iron company, to wit: two locomotives, eighteen gondola cars, a combination passenger coach, 120 mining cars, a diamond drill, seven hundred tons of coke and iron ore, valued by the said Rice in his affidavit in said proceedings at more than $50,000, or at least $50,000. Most of this property was the equipment of the Fort Payne & Eastern railroad, a line about eight miles in length extending from Fort Payne to the coal mines of the company, and owned by the Fort Payne Company, and also a part of the equipment of their mines. That a form of sale was

gone through and said bank purchased said property at the amount of its debt, there being no other bidders present, but in consideration of the great disparity between the debt and the value of the property, the said bank agreed to allow the Fort Payne Coal and Iron Company to redeem the property within sixty days from date of sale upon payment of the amount of the debt, but that the said company failed to do so, and the property was redeemed by other parties, who have given the said company until August 24 to redeem upon payment of the debt, with interest and $1,500 bonus.

6. That in the month of July, 1892, the said coal and iron company, being in need of money, borrowed $5,000 of one A. B. Green, of Fort Payne, through W. P. Rice, president, who gave as security therefor $30,000 of bonds upon the hotel property costing $80,000, total issue of bonds $100,000; $10,000 of stock in fire-clay works, said stock costing $15,000; $11,700 of stock in a stove works, capitalized at $60,000, costing probably $20,000, and $4,000 of the bonds of the coal and iron company, and agreed that the said Green could sell said property in two weeks afterward, if not paid, so as to get the title in himself, the company being granted the privilege to redeem from said Green within seventy-five days after sale; and your orators believe, and so charge, that of the face amount of the note of $5,000 executed to Green, the coal and iron company received only $4,500, the balance being reserved by Green and allowed him as a compensation in the nature of a commission, but your orators believe, and so aver that said property is now held by A. J. Butler, as trustee for the said Green. Other like deals and doings of the management with the properties of the said coal and iron company your orators have reason to believe have taken place, to the manifest injury and destruction of the interest of bondholders and stockholders of the Fort Payne Coal and Iron Company.

7. Your orators further show that the Fort Payne Coal and Iron Company has defaulted in the payment of its taxes, amounting to nearly $10,000, and that on the 31st of May last its real estate was sold mostly to the State for delinquent taxes, that its railroad costing $300,000, was bid in by a firm of Kansas bankers, Stackpole & Tobey for $1,816, more or less, and that by the laws of Alabama, in order to redeem said property 15 per cent. interest per annum in addition to the amount of taxes and costs will have to be paid, that the hotel costing $80,000 was sold to the State for $407.45 the amount of taxes.

8. Your orators show that they are bondholders and stockholders, as follows:

	Stock.	Bonds.
A. L. Sayles	--	$6,450
R. P. Kingman	--	5,050
Henry A. Yeaton	78	5,700
Charles H. Garrett	30	700
John Conlon	--	1,000
Benjamin Kennard	22	2,200
Albert E. Rand	50	250
Asa Walker	20	1,500

		Stock.	Bonds.
	C. H. Snow	26	$500
6	R. L. Snow	--	1,000
	William Ward	60	3,000
	F. R. Garrett	25	300
	Asa A. Yeaton	68	1,700
	S. Liebman	20	800
	Winifred Yeaton	10	350
	H. D. Pierce	70	1,000
	Charles A. Eaton	85	500
	Horace B. Parker	--	1,000
	Geo. Bilbrick	--	2,000

That interest was due on said bonds March 1, 1892, and that default was made therein by said coal and iron company, and the interest coupons have not been paid to this day, though demand made.

9. Your orators show that on account of the failing condition of things the stock of the Fort Payne Coal and Iron Company has sold in the unlisted department of the Boston exchange, where it has been regularly traded in, as low as $1.50 per share, and its regular quotation is at or near that figure, that the bonds are quoted at fifty cents on the dollar. That on the first of September, 1892, interest coupons of another half year will again be due, that the company has no funds on hand wherewith to meet said coupons, nor does it seem likely to be able to meet the interest due and — become due. That the Old Colony Trust Company, trustee, has brought no suit to foreclose the mortgage made to secure the principal and interest.

10. That on the 18th of July, 1892, at a meeting informally held in Boston of the stockholders of the Fort Payne Coal & Iron Company, a plan of reorganization was discussed and apparently approved by those present, viz.: To make another issue of $1,000,000 of bonds, running 30 years and bearing 5 per cent. interest; redeem the old bonds with new ones at eighty-five cents on the dollar, sell the remainder of $600,000 of the new bonds at eighty-five, and the remainder — the issue, $400,000, to be placed in the treasury to be sold at such times as the necessities of the company demanded. At the special meeting of the stockholders, regularly held in Fort
7 Payne, July 26, when W. P. Rice held a majority of the proxies, only a few stockholders being personally present, it was voted to make a new issue of $1,000,000 of bonds to be sold at such price and in such manner as the directors of the company see fit, with power to the directors to hypothecate said bonds or loans, thus not limiting the new issue to the purposes of paying off the old debt and providing a working capital, but opening a door to the wrongful and injurious use of said proposed issue of bonds.

11. That under the laws of Alabama, stockholders have been held liable to creditors to the amount of the unpaid portion of their stock, and your orators, who are stockholders, show that under the

authority contained in the resolutions of reorganization money could be borrowed on said bonds for the use of the company and stockholders held liable therefor, though the value of said bonds in open market might not command any price at all; your orators further show that the most of the bondholders of the Fort Payne Coal & Iron Company of the present issue outstanding are also stockholders of the company, and that, therefore, through and by means of such contrivance, as above described, their protected position as bondholders, may be rendered entirely defenseless through exposure to liability as stockholders, and they feel that as holders of the stock which they purchased in good faith, as full paid and non-assessible, their losses have already been sufficient, and they point out that authority is contained in said resolutions sufficient to enable directors to pledge the whole issue without redeeming a single bond of the old issue.

12. That on the 28th of July, 1892, the First National Bank of Fort Payne sold at public outcry, after due notice, $30,400 of stock of the Fort Payne fire-clay works, and $10,000 of the stock of the Fort Payne stove works, owned by the Fort Payne Coal & Iron Company, and hypothecated to said bank for a loan of $5,000 to said company, said stock had cost the company at least $55,000 yet it was bid in for the amount of debt, there being no other bidders present than said bank.

13. That the Citizens' Bank & Trust Company, of Chattanooga, or G. N. Henson, of that city, hold pledged security of the Fort
8 Payne Coal & Iron Company to the amount of $14,342.09, for a debt of $3,275, now past due, and unless paid it is probable said securities will be foreclosed and sold at the amount of the debt.

14. That your orator, H. B. Pierce, is a creditor of the Fort Payne Coal & Iron Company to the amount of $—, and holds $2,500 of the company's bonds as collateral thereto.

15. That at the term of the circuit court, now in session at Fort Payne, judgments to the amount of near $10,000 will be taken against the coal and iron company.

16. That by the sale of the equipment of the railroad and of the coal mines, the value of these properties is greatly impaired, and the interest of bondholders and stockholders as well, accordingly lessened, and all of said properties are deteriorating through disuse, so that it is doubtful if the bonded property would at public sale bring a sum equal to the amount of bonds.

17. Your orators show that while no business is being carried on by the coal and iron company, while no income is being derived through any of its possessions more than a mere bagatelle, yet a management is kept up in some respects expensive and extravagant in many respects useless, and certainly wasteful; salaries are contracted to be paid, as for instance, a skilled civil engineer, with nothing to do, the employment of several, whose apparent duty is to laud and uphold the present management, and other such expenses, as are regularly incident to a company of this nature in full life and prosperous career, and all to no purpose, so far as the re-

habilitation of the affairs of the company are concerned, but on the contrary, the course of the company's affairs has been steadily downward, until its present status is that of a bankrupt organization.

18. Your orators, who are stockholders, further show that, as aforesaid by the laws of Alabama, they may be held liable to creditors for the unpaid portion of the stock of the Fort Payne Coal & Iron Company, and it is of interest to them that the property of the company be conserved and administered carefully and prudently, and not wastefully and heedlessly, to the end that the debts of the company may be liquidated out of its present assets, if possible, without recourse to stockholders, who have purchased in good faith the stock as full-paid and non-assessable; and in their judgment such stringent necessity shown as to warrant the immediate appointment of a receiver to care for said property.

19. That while there is a full board of directors of the coal and iron company, yet, in fact and in truth, W. P. Rice, its president, is the "top, bottom and all between" of its management, and its affairs are to all intents and purposes dictated and determined as by one man, that the said W. P. Rice is not a bondholder, and while at one time a large holder of the stock, it is believed by your orators that he now holds only a few shares to make him eligible as a director, and that he is financially irresponsible.

20. That during all this time the available assets of the company, as bills receivable, stocks, etc., have been steadily reduced, and what of them remains are much depreciated in value.

21. In fine, the doings and acts of the management of the Fort Payne Coal and Iron Company are to the manifest wrong and injury of your orators and other creditors of said corporation, and your orators file this bill on behalf of themselves and all other creditors of said Fort Payne Coal and Iron Company and all other persons interested, who may come in and make themselves parties hereto.

In consideration whereof and forasmuch as your orators are without full and appropriate remedy, according to the rules of law, and can only have adequate relief in a court of equity, your orators pray that a temporary receiver be appointed at once for the Fort Payne Coal and Iron Company, to be made permanent, or succeeded at the hearing, by a permanent receiver, with such power in the premises as the court may deem proper, and that there be granted unto your orators the writ of injunction, restraining and enjoining said defendants named in the caption hereof, and each and every of them, their agents and attorneys, and all other creditors of said company from selling or otherwise disposing of, by execution or otherwise, any of the property or assets of said insolvent corporation, and also restraining all persons whomsoever from maintaining or prosecuting any separate proceeding or suit against the said corporation within the jurisdiction of this court, and requiring all creditors to come in and prosecute their several demands in and under this proceeding.

And to grant unto your orators the writ of subpœna for said resi-

dent defendants, and have publication made for such as are non-residents of this district, commanding them personally to answer the allegations of the bill, and to stand to, abide and perform such orders and decrees as to your honors may seem meet; and that the property and assets of said corporation may be converted into money and the debts paid off, according to the respective rights, liens, priorities of creditors, and for such other, further and general relief as equity and good conscience may require. And as in duty bound, etc.

CHAS. TURNER,
JAMES NORFLEET,
Counsel for Petitioner-.

Endorsed hereon—Filed in clerk's office, August 6, 1892. N. W. Trimble, clerk.

Personally appeared before me, this fourth day of August, 1892, James Norfleet, of counsel for the petitioners, in the foregoing bill, and being duly sworn, states that the matters therein contained are true of his *known* knowledge, except those stated on information and belief, and as to those he believes them to be true.

JAMES NORFLEET.

Sworn to and subscribed before me this 4th day of August, 1892.

JOHN BRUCE, *Judge.*

Foot-notes.

The defendant, The Fort Payne Coal and Iron Company, is required to answer all the paragraphs of the bill on oath, the Old Colony Trust Company is not required to answer, A. B. Green and A. J. Butler will answer as to those paragraphs which relate to them, and the Citizens' Bank and Trust Company likewise, and also G. N. Hensen; the latter are not required to answer on oath.

CHARLES TURNER,
JAMES NORFLEET,
Solicitors for Petitioners.

Endorsed thereon—Received in clerk's office and filed August 6, 1892. N. W. Trimble, clerk.

11 EXHIBIT "A."

Expert Accountant's Report.

FORT PAYNE, *February* 18, 1891.

To the stockholders of the Fort Payne Coal and Iron Company:

At a meeting of the stockholders held in Boston, December 31, 1890, a committee of three was elected to employ an expert accountant and go to Fort Payne and examine the books and accounts of the Fort Payne Coal and Iron Company and report upon the condition of the same.

The committee secured the services of a first-class accountant, Albert W. Mann, of 48 Congress street, Boston.

I know from personal observation and assistance that he has performed his work with the utmost degree of thoroughness.

We have been treated with great courtesy by Mr. F. H. Tobey, the treasurer, and by his assistants, Messrs. W. H. Grant, W. T. Dunn, C. W. Olson and also by Mr. J. F. McGowan, the auditor of the company, and have had every facility afforded us in making the examination.

We find the books and accounts neatly and accurately kept, and all expenditures properly vouched for. Our examination began with the opening of the books February 7, 1889, and was brought down to February 1, 1891.

I submit herewith the result of the examination:

FORT PAYNE, ALABAMA, *February* 17, 1891.

Messrs. H. G. Sherman, E. T. Merriam, F. W. Pierce, committee of stockholders.

GENTLEMEN: Having executed the commission to examine the books and accounts of the Fort Payne Coal and Iron Company from the organization of the company until February 1, 1891, I beg leave to submit the report hereto annexed.

The books and accounts were at once placed at my disposal by the officers of the company, and I have been materially aided in the examination by the treasurer, Mr. F. H. Tobey, and his assistants in the office.

I find vouchers for all payments. As the business of the company has developed in various directions, the system of auditing and keeping the vouchers has greatly improved, and appears now to be very complete and well adapted to the business of the company.

12 The books of the company in charge of Mr. W. H. Grant are neatly and accurately kept.

Very respectfully yours,

ALBERT W. MANN,
Accountant.

Financial Condition of the Fort Payne Coal and Iron Company.

Resources.

	FEBRUARY 7, 1889.
Real estate, town lots, valley, mineral, and coal lands	$4,750,000 00
Hanover Nat. Bank of N. Y., on deposit	98,026 38
Northern Banking Company of Portland, Me., on deposit	40,200 00
National Bank of Redemption of Boston, on deposit	38,397 40
First National Bank of Birmingham, Ala., on deposit	36,222 37
Bills receivable	17,365 00
Due from sundry persons on account of subscriptions to stock	18,800 00
Cash	988 85
Total	$5,000,000 00

Liabilities.

Capital stock ---- ---- ---- $5,000,000 00

Balances of the Several Accounts as per Trial Balance.

JANUARY 31, 1890.

	Debit.	Dr. totals.	Credit.
Cash		$4,800 83	
Accounts receivable:			
Bills receivable	$50,043 83		
City of Fort Payne	2,831 29		
Foster M'f'g Company	10,427 82		
Band	600 00		
Stock account	400 00		
Bay State Furnace Co.	575 00		
Land sales	90,420 33		
J. J. Nix	4 80		
C. O. Godfrey	122 70		
A. B. Green	80 39		
W. B. Farrar	1,682 64		
E. W. Robinson	1,800 00		
J. Henry Straight	1,249 19		
W. P. Rice	92 83		
		160,330 82	
Accounts payable:			
Bills payable	$104,864 37		
F. H. Tobey	107 50		
Grand hotel	164 20		
J. M. Ford	22 90		
Excursion account	126 95		
			105,285 92
13 Developments:			
Street improvements	$16,809 29		
Surveying	2,272 52		
Clay account	472 15		
Coal	39,324 36		
Drill account	10,691 72		
Iron	8,421 91		
Pay-roll	2,775 49		
Tool account	1,191 00		
Park	1,069 56		
Exhibit account	2,176 97		
		85,204 97	
Investments:			
Hotel	$73,996 06		
Stove works	18,052 74		
Fire-brick	81,159 94		

	Debit.	Dr. totals.	Credit.
Water works	$60,898 92		
Railroad	187,206 26		
Electric light	5,140 82		
Boarding-house	2,119 97		
Boarding-house No. 2	786 85		
Cave account	3,328 02		
Stable	786 10		
Shop	726 26		
Bank building	20,783 74		
Powers building	219 45		
Coke ovens	6,466 49		
Store at coal mines			161 95
Team	103 00		
Taylor house	2,889 75		
Trustee account	251,666 66		
Tenn. Contract & Building Company	1,738 42		
Lodging account	1,102 28		
		719,171 73	
Rent account			141 34
Real estate, first purchase	4,500,000 00		
Since	40,414 03		
		4,540,414 03	
Expense accounts:			
Expense	$63,390 47		
Furniture and fixtures	3,782 67		
Stationery	2,624 75		
		69,797 89	
Profit and loss			474,788 83
Commission			1,756 41
School-house	128 89		
School-house No. 2	1,768 86		
Presbyterian church	516 43		
		2,414 18	
Capital stock			$5,000,000 00
		$5,582,134 45	5,582,134 45

14 *Approximate Cash Statement, Feb. 7, 1889, to Jan. 31, 1890, Inclusive.*

Receipts.

Stock	$999,600 00
Bills payable	105,285 92
Land sales	334,324 67
Commission and sundries	2,059 70
	$1,441,270 29

Expenditures.

Pay-roll		$133,462 90
Railroads		187,206 26
Hotel		73,996 06
Iron		8,421 91
Coal		39,324 36
Coke ovens		6,466 49
Stove works		18,052 74
Electric light		5,140 82
Fire-brick		81,159 94
Sundry accounts		9,966 82
Accounts receivable		19,466 66
Real estate, first purchase		750,000 00
Real estate, later purchase		40,414 03
Expenses, viz:		
Advertising	$7,866 65	
Telegrams	318 84	
Traveling expenses	4,479 69	
Entertainments	8,190 76	
Prospecting and analysis	3,705 95	
Sundries	4,170 88	
Salaries, viz:		
J. W. Spaulding	12,000 00	
C. O. Godfrey	6,000 00	
F. H. Tobey	3,000 00	
H. K. Keith	2,000 00	
W. H. H. Minot	1,200 00	
H. T. Pope	900 00	
A. T. Butler	500 00	
L. A. Dobbs	519 92	
G. H. Merriam	840 00	
O. S. Powers	840 00	
W. J. Chase	600 00	
J. F. Haxel	780 00	
H. H. Little	720 00	
Mr. Hinckley	660 00	
Tolar & Winston	720 00	
M. L. Starr	840 00	
J. F. McGowan	1,000 00	
Sundry parties	637 78	
		63,390 47
Cash balance Jan. 31, 1890		4,800 83
		$1,441,270 29

15 On the 31st of January, 1891, the following accounts were closed and the balance charged off to profit and loss:

Fire-brick	$43,000 00
Expense	58,225 63
Stationery	774 82

Surveying	$4,903 39
Excursions	15,197 07
Land sales and excursion	11,141 47
Boston office	6,185 41
Philadelphia office and excursion	1,600 00
	$141,027 79

Balances of the Several Accounts as per Trial Balance January 31, 1891.

	Debit.	Dr. totals.	Credit.
Capital stock			$5,000,000 00
Accounts receivable:			
Bills receivable	$94,209 59		
City of Ft. Payne	4,727 76		
Foster Manufacturing Co.	155 49		
Bay State Furnace Co.	2,043 21		
Land sales	59,556 81		
J. Henry Straight	112 74		
Rolling mill	948 32		
		$1,617,543 92	
Ice and Storage Co.	184 24		
Ft. Payne Furnace	27,993 15		
Southern Pavement Co.	201 25		
Dustin-Hubbard Edge Tool Co.	219 08		
Ft. Payne Basket and P'kage Co.	532 04		
Ft. Payne Fire Clay Works (new company)	6,912 43		
Ft. Payne Stove Works (new company)	46,004 82		
Dekalb hotel (new company)	254 00		
Daniel A. Glinn	222 00		
Stoddard Car Line Co.	143 50		
		244,420 43	
Investment accounts:			
Water-works			5,170 82
Railroad	260,545 43		
Boarding-house	2,137 65		
Boarding-house No. 2	786 85		
Stable	1,176 27		
Shop	643 78		
School-house	2,582 03		
Rent of house at coal mines	1,741 52		

	Debit.	Dr. totals.	Credit.
Bank building	$25,051 01		
Powers building	219 45		
Taylor house	2,499 75		
Trustee account	1,891 66		
Stock	85,650 00		
Electric light	19,151 01		
Coke ovens	51,279 37		
		455,354 78	
16 Development accounts:			
Coal	$79,285 05		
Iron	22,839 18		
Drill	12,832 15		
Cave	4,538 32		
Street improvement	17,585 35		
Park	1,254 46		
Exhibit	2,574 00		
Clay mine No. 1	2,909 01		
Clay mine No. 2	635 42		
Tool account	1,216 83		
Telephone	735 75		
Powder-house	3 20		
Brown ore	3,725 64		
Red ore	3,588 23		
Beeson Gap mine	10 30		
W. T. Dunn, P. M.	285 70		
		154,018 60	
Furniture and fixtures		4,537 23	
Accounts payable:			
F. H. Tobey	$505 40		
J. W. Spaulding	2,167 15		
W. P. Rice	1,790 98		
C. O. Godfrey	197 08		
F. R. Investment Co.	7,749 10		
Banking and Trust Co.,	200 00		
Henry B. Price	416 67		
S. L. Arrington	500 00		
People's saving bank	6,500 00		
J. G. & A. B. Green	12,327 92		
J. M. Ford	2,024 90		
Notes payable	145,552 74		
Merchandise bills payable	25,504 35		
			205,436 24
Hotel stock bond account		100,000 00	
Stove-works subscription			2,387 50
Hotel subscription			2,635 00
Real estate		4,559,663 73	
Profit and loss			329,083 79

	Debit.	Dr. totals.	Credit.
Presbyterian church		516 43	
Suspense		25,504 35	
National Bank of Redemption		4 43	
Cash		693 37	
		$5,544,713. 35	$5,544,713 35

Cash Statement January 31, 1890, *to January* 31, 1891.

Receipts.

Stock, 9,541 shares at $37	$353,017 00
Bills payable (sale of notes)	371,485 94
Land sales	29,800 00
Bills receivable	87,623 32
Stocks and bonds	109,702 17
Cash on hand January 31, 1890	4,800 83
	$956,429 26

Expenditures.

Pay-roll		$164,447 34
Railroad		44,930 73
Hotel		11,051 46
Iron		10,747 56
Coal		8.085 01
Coke ovens		20,534 65
Stove works		12,874 20
Electric light		1,940 48
Bills payable		473,870 95
Fire-brick		28,704 64
Sundry accounts		47,371 24
Commission on sale of stock		68,952 00
Expenses, viz:		
Traveling expenses	$9,698 01	
Entertainment	1,908 34	
Advertising	8,405 51	
Prospecting and analysis	2,607 95	
Telegrams	492 73	
Sundries	4,705 10	
	$27,817 64	
Salaries, viz:		
J. W. Spaulding	$11,750 00	
C. O. Godfrey	5,500 00	
F. H. Tobey	2,750 00	
A. J. Butler	1,450 00	
W. H. Grant	1,750 00	
O. S. Powers	990 00	

H. T. Pope	$900 00		
J. F. McGowan	1,350 00		
G. H. Merriman	795 00		
M. L. Starr	795 00		
W. H. H. Minot	1,023 30		
W. T. Dunn	620 00		
C. W. Olson	350 00		
Other salaries	384 69		
		$30,407 99	
			$58,225 63
			$955,735 89
Cash on hand February 1, 1891			693 37
			$956,429 26

Recapitulation Cash Account.

February 1, 1890, balance of cash on hand	$4,800 83	
Cash receipts, year ending January 31, 1891	951,628 43	
Cash expenditures, year ending Jan. 31, 1891		$955,735 89
Balance of cash on hand		693 37
	$956,429 26	$956,429 26

18	Cash paid by company for land at beginning	$750,000 00	
	Total cash expenditures to February 1, 1890	686,469 46	
	Total cash expenditures from February 1, 1890, to February 1, 1891	955,735 89	
	Total amount of cash expended by company		2,392,205 35
	Sale of real estate to February 1, 1890	$480,709 82	
	Sale of real estate, year ending Jan. 31, 1891	76,018 45	
			556,728 27

Amount of bills receivable as per statement Jan. 31:

Statement of January 31, 1891		94,209 59
Derived from sale of lots	$61,299 88	
Merchandise, including stoves	2,271 01	
Stock	12,118 50	
Bonds	1,527 50	
Local industries, etc.	15,979 12	
Miscellaneous	1,013 58	
		94,209 59
The amount of bills payable as per bill book outstanding February 1, 1891		145,525 74

Contingent liabilities:

Water-works bonds	$80,000 00	
Electric light	5,000 00	
		85,000 00

The foregoing statements are correct to the best of my knowledge and belief.

ALBERT W. MANN, *Accountant.*

Fort Payne, Ala., Feb 17, 1892.

Before closing my report I desire to impress upon all the stockholders that the Fort Payne Coal & Iron Co. have a very valuable property. I have not visited Fort Payne since May, 1889, and while I expected to see good results which had been accomplished since then, I was not prepared for what exists here now.

Your committee was at considerable trouble to visit as much of the company's property as possible and examine the various industries owned by it and other corporations, and is very much pleased with the substantial character of the works and more sensible impressed than ever by the completeness of the same and the great value of the property. I find here industries completed, or nearly so, to employ over 3,000 men.

This of itself would necessitate a city of more than 10,000 people. I think no person need be apprehensive that the coal will be exhausted, as it certainly shows no signs of failure.

I know from personal inspection that the vein is from 28
19 to 46 inches in thickness, and I am informed by those who have spent their lives in iron manufacturing that it produces coke of a superior quality. The iron ore seems to be practically inexhaustible and of a good quality. While these are the principal mineral and natural resources of the company it also has upon its territory large deposits of fire-clay, limestone, sandstone, and a fair amount of timber. I am firmly of the belief that the income from the mining and sale of coal and iron ore and the manufacture and sale of coke can be made to afford a sufficient income to pay all expenses of the company and a reasonable dividend on the capital stock.

The bonding of the company's property for $300,000 places upon the market securities which must be safe beyond all question, and bearing a high rate of interest.

To insure the success of the company and put it upon a sure financial basis it is absolutely necessary that these bonds be placed. In view of these facts I would recommend that the stockholders come to the relief of the company, and subscribe for these bonds as liberally and promptly as possible.

Respectfully submitted, F. W. PIERCE,
Representing Committee of Stockholders.

Endorsed thereon: Received in clerk's office and filed Aug. 6, 1892. N. W. Trimble, clerk.

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EXHIBIT "B."

Copy of trust deed, conveying real property of Fort Payne Coal and Iron Company to Old Colony Trust Company, Boston, to secure an issue of $300,000.00 in bonds.

This indenture made this twenty-fifth day of February, in the year eighteen hundred and ninety-one, by and between the Fort Payne Coal and Iron Company, a corporation duly created and organized under and according to the laws of the State of Alabama, and located in Fort Payne, De Kalb county, in said State of Alabama, party of the first part, and the Old Colony Trust Company, a corporation duly created and organized under and according to the laws of the Commonwealth of Massachusetts, with power to accept and execute trusts, such as those hereinafter defined and conferred and located in Boston in said Commonwealth, party of the second part, witnesseth:

Whereas, said party of the first part at a meeting of its stockholders, held in Fort Payne, Alabama, on the eighteenth day of February, 1891, at which a majority interest of the stockholders were present, in person or by proxy, determined or voted to create a series of fifteen hundred and fifty bonds to be numbered from one to fifteen hundred and fifty (1 to 1550), both numbers included; fifty to be for one thousand dollars ($1,000) each, two hundred for five hundred dollars ($500) each, four hundred for two hundred dollars ($200) each, five hundred for one hundred dollars ($100) each, and four hundred for fifty dollars ($50) each, to amount in the aggregate to the sum of three hundred thousand dollars ($300,000), payable the first day of March, nineteen hundred and one (1901), to bear interest at the rate of eight per cent. (8 per cent.) per annum, payable semi-annually on the first day of March and first day of September of each year, until the principal is fully paid; the principal and interest to be payable at the Old Colony Trust Company in the city of Boston, Massachusetts, which bonds are to be devoted solely to the purpose of procuring funds to pay the outstanding indebtedness of the company and provide a working capital and for other purposes for which it *it* may be lawful for this company to issue bonds.

And whereas, said party of the first part, at the meeting of its stockholders as aforesaid, determined that the said bonds should be expressed in the following words and figures, to wit:

UNITED STATES OF AMERICA, *State of Alabama.*

Fort Payne Coal and Iron Company.

"The Fort Payne Coal and Iron Company, a corporation organized under the laws of the State of Alabama, and having its office and principal place of business at Fort Payne, De Kalb county, Alabama, for value received, promises to pay to the Old Colony Trust Company of Boston, Massachusetts, or bearer, on the first day of March, A. D. 1901, —— dollars, with inter-

est at the rate of eight per cent. (8 per cent.) per annum, payable semi-annually on the first days of March and September in each year on the presentation and surrender of the annexed coupons as they severally become due; principal and interest payable at the office of the Old Colony Trust Company in the city of Boston, Massachusetts.

"This bond is one of a series of fifteen hundred and fifty (1,550) bonds of like tenor and date, issued by said Fort Payne Coal and Iron Company, numbered from one to fifteen hundred and fifty, inclusive, four hundred being for fifty dollars each, five hundred for one hundred dollars each, four hundred for two hundred dollars each, two hundred for five hundred dollars each, and fifty for one thousand dollars each, aggregating three hundred thousand dollars in amount, and secured by a deed of trust, dated the twenty-fifth day of February, A. D. 1891, and duly recorded, conveying to said Old Colony Trust Company, in trust, the real estate of said coal and iron company, situated in De Kalb county, Alabama, and particularly described in said deed of trust.

"This bond shall not become obligatory until it shall have been authenticated by the execution of the certificate endorsed thereon by the trustee; and said coal and iron company reserves the right to pay and take up this bond by giving sixty days' notice thereof in the manner provided by the deed of trust, by paying the legal holder all accrued interest and five per cent. premium on the principal together with the principal at any time after the expiration of one year from date.

"In witness whereof, the said Fort Payne Coal and Iron Company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and treasurer, and the coupons hereto annexed to be authenticated by the fac-simile signature of its treasurer, the second day of March, A. D. 1891.

—— ——, *Treasurer.*
—— ——, *President.*"

22 *Coupon.*

"The Fort Payne Coal and Iron Company will pay the bearer —— dollars at the office of the Old Colony Trust Company in the city of Boston, Massachusetts, on the first day ——, being six months interest then due on its bond No. —.

—— ——, *Treasurer.*"

Trustee's Certificate.

"The Old Colony Trust Company, within-named trustee, hereby certifies that this bond is one of the series of fifteen hundred and fifty (1,550) described in the within bond and amounting in the aggregate to three hundred thousand dollars.

OLD COLONY TRUST COMPANY, *Trustee,*
By —— ——."

It was further voted that the officers be instructed to make and execute to the Old Colony Trust Company a deed of trust conveying all of the real property of the corporation for said trust company to hold in trust as security for the payment of all said bonds and interest. Said deed to contain such clauses and provisions and to be of such form as may be prescribed by the directors of this company.

And whereas, said party of the first part by its board of directors, authorized as aforesaid, determined that the trust deed should be in words and figures as hereinbefore and hereinafter written:

Now, therefore, in consideration of the premises and the sum of one dollar, this day paid to the party of said first part, by the party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of said bonds, which the party of the first part has so resolved to issue and dispose of, as herein recited and provided, of the Fort Payne Coal and Iron Company, as the same shall become due and payable, and for the further purpose of securing the performance of the covenants hereinafter contained, the party of the first part has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the party of the second part, all the real estate, franchises, easements, with buildings, structures and appurtenances thereon and described as follows:

23

(The description of the property conveyed is omitted, it embraces the following:

25,630 acres, mineral, timber and farm lands; 6,200 acres mineral rights; 1,801 town lots and estimated 700 town lots not platted.

All the above cost the Fort Payne Coal and Iron Company	$809,663 73
Bank and office building cost	25,051 01
Fifty houses and cabins, stables, etc., cost	16,075 00
Two school-houses, cost	2,582 03
100 coke ovens and machinery, cost	51,279 37
Cave development and house, cost	4,538 32
Powder-house, cost	117 89
Railroad (less equipment), cost	240,545 43
Coal, iron and clay mines, development, cost	112,992 84
Total cost to company of all the property	$1,262,845 62)

To have and to hold all of the said property, franchises, easements, privileges and other granted premises to the party of the second part, its successors and assigns, forever in trust, for the purposes herein set forth, until the said bonds shall have been fully paid and satisfied, according to the tenor thereof, all as hereinafter expressed or declared, and for the equal *pro rata* benefit and security of all such persons and corporations as shall from time to time become the holders of any of the above-mentioned bonds and coupons attached to them, to each respectively, without preference or priority by reason of priority in time of negotiation or for any other

reason whatever, and upon the following conditions, covenants and agreements, namely:

1. Until default shall be made in the performance of the
24 conditions of this instrument, or in any of them, the party of the first part shall remain in possession and retain exclusive control of the mortgaged premises and every part thereof; and shall collect, take and use the earnings, profits, incomes and revenues and dispose of the same, and with the same effect as if this deed had not been made.

2. In case default shall be made in the payment of the principal of any of said bonds at maturity, upon demand therefor, by any holder or on behalf of the holders of any of said bonds at or after maturity thereof, and such default shall continue for six months after such demand, or in case default shall be made in the payment of any of the interest coupons, attached to any of said bonds, according to the tenor thereof, on demand thereof, and such default shall continue for six months after such demand, or in case default shall be made in any of the other requirements of this indenture and such default shall continue for six months, then and in case of any or either of the defaults continuing as aforesaid, the trustee, in its, his or their discretion, may, and at the request in writing of the holders of a majority of the bonds hereby secured, then outstanding and unpaid, shall, with or without entry, sell and dispose of all the premises aforesaid with all improvements, renewals and additions thereto, at public auction in said city of Fort Payne, Alabama, at the option of said trustee, first publishing a notice of the time and place of sale in one or more newspapers published in said city of Fort Payne, and one newspaper published in the city of Boston, Massachusetts, once each week for six consecutive weeks preceding the time appointed for the sale; and upon such sale shall convey the same by proper deed or deeds to the purchaser or purchasers, absolutely and in fee simple; and such sales shall forever bar the party of the first part and all persons claiming under it, from all rights and interests in the granted premises, or any part thereof, whether in law or equity; and after deducting from the proceeds of such sale all costs, charges and expenses thereof, including a reasonable sum for compensation to said trustee, and for counsel fees and for all necessary expenses attending the sale, the trustee shall apply the proceeds of such sale,
25 first to the payment in full of all overdue interest coupons, and then to the payment of the principal of such of the aforesaid bonds as may at the time be outstanding and unpaid whether or not the same shall have become previously due, and of the unpaid interest which shall at that time have accrued, without discrimination or preference, but ratably to the aggregate amount of said principal and such accrued and unpaid interest, in lawful money of the United States; and if, after satisfaction thereof, as aforesaid, a surplus of said proceeds shall remain, the trustee shall pay over the same to the party of the first part, its successors or assigns, or to whomsoever the trustee may decide to be lawfully or equitably entitled to receive the same. If the debt due and expenses

are paid before the day of the sale, the right to possession by the trustee is to cease until further default. And the party of the first, for itself or successors, covenants with the party of the second part, that in case a sale shall be made under the foregoing powers, it, he and they will execute and deliver to the purchaser or purchasers, at such sale, such confirmatory deed or deeds, as may be reasonably demanded.

3. At any sale of the aforesaid property, or any part thereof, whether made by virtue of any of the powers herein granted and given, or by judicial authority, the trustee may, if it, he or they shall consent so to do, and not otherwise, purchase the same, for and in behalf of the holders of said bonds secured by this instrument then outstanding, in proportion to the respective interests of such bondholders.

4. The party of the first part hereby covenants and agrees that it will from time to time, and whenever thereto requested, execute, acknowledge and deliver all such further deeds and papers as may be needed to assure to the trustee all the property and rights intended hereby to be conveyed and assured.

5. The party of the first — hereby further covenants and agrees that it will, at any and all times, prior to the satisfaction of this indenture, during which time it may remain in possession, and retain the exclusive control, of the premises, maintain the same in good and sufficient repair, without necessary waste or loss, ordinary wear and tear and unavoidable depreciation only excepted.

26 6. In case the party of the first part shall fail to maintain and operate the property hereby conveyed and every part thereof, in conformity to the requirements of this instrument, and such failure shall continue for a period of sixty days after the receipt by the said party of the first part of a notice from the Old Colony Trust Company, of Boston, Massachusetts, or from a majority of the holders of said bonds secured by this instrument, and then outstanding, which latter notice shall be supported by affidavit, that the party of the first part has allowed, and is continuing to allow unnecessary waste of the property secured by this instrument, then may the trustee, for and in behalf of the holders of the said bonds secured by this instrument, and then outstanding, take possession, without further legal process, of the entire premises and every part thereof, and may at once proceed to make good any wastage or loss which may have been allowed by the party of the first part to take place in the said premises, or any part thereof, and may at once proceed to take possession of said property, and the entire costs and expenses for renewing, replacing and making good any such waste or loss, together with reasonable compensation, and for counsel fees, shall be paid to the trustee by the party of the first part; or in case of failure of said party to make said payments, then shall the trustee be authorized and empowered to reimburse itself for said costs and expenses and pay itself said compensation and fees, from any money or moneys, which may be seized by it, when it takes possession of such premises, or any part thereof, or which may have been or may be collected or taken, as part of the earnings, profits, incomes or revenues

of said premises and any part thereof, during such period or periods, as may have elapsed while the trustee shall remain in possession of the premises.

In the event that the said party of the first part shall fail to pay the whole, or any part of said compensation, fees, costs and expenses, and the earnings, profits, incomes and revenues of the said premises during said time, or times, are not sufficient to pay the same, or if the combined payments of the said party of the first part, and the earnings, profits, incomes and revenues of the said premises
27 are not sufficient to pay the same, then shall any and all unpaid parts of said compensation, fees, costs and expenses constitute a prior lien, to this instrument upon said premises.

7. The said trustee shall, upon the written request of the party of the first part, convey or release any town lot or lots or any other property covered by this conveyance, as directed by the said coal and iron company, which may be bargained and sold by said coal and iron company, providing said coal and iron company shall deposit with said trustee, to be held by said trustee, under and subject to the provisions of these presents, the purchase-money or securities received therefor; providing again, in case of the sale of the railroad conveyed by these presents, the said coal and iron company shall deposit with said trust company the sum of one hundred thousand dollars of the proceeds of such sale, whether such sum may be more or less than the amount received therefor. All moneys thus deposited with the trustee, shall be invested by the trustee in such interest-bearing securities as may be approved by said coal and iron company, and the income thereof shall be held by said trustee under and subject to the provisions of these presents and from time to time invested in the same way.

8. Nothing herein contained shall be held to deprive the trustee, or any bondholder, of any legal or equitable remedy for collecting the interest or principal of said bond, or availing themselves of the securities therefor, whether by foreclosure or otherwise.

9. The party of the first part, in consideration of the premises, hereby further covenants and agrees with the said party of the second part, that it, the party of the first part, shall and will at all times hereafter, observe, perform and keep all and every the conditions, covenants and provisions contained herein to be by it observed, performed and kept.

10. The party of the second part, as trustee, or otherwise, shall be under no obligation to recognize any person, or persons, firm or corporation, as holder or holders, owner or owners, of one or more of the bonds secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any person or persons, firm or corporation, professing or claiming to be such holder
28 or holders, owner or owners, until such supposed holder or holders, owner or owners, shall produce the said bonds and deposit the same with the trustee, and shall indemnify and save harmless the trustee to its full satisfaction from any and all costs and expenses, outlays and counsel fees and other reasonable dis-

bursements for which it may become liable or responsible on proceeding to carry out such request or demand.

The right of action under this indenture is vested exclusively in the trustee, and under no circumstances shall a bondholder, or any number of bondholders, have a right to institute an action, or other proceeding on or under this indenture, for the purpose of enforcing any remedy herein and hereby provided, except in case of refusal on the part of the trustee to perform any duty imposed on it by this agreement; and all actions and proceedings for the purpose of enforcing the provision- of this indenture shall be instituted and conducted by the trustee according to its sound discretion; but the trustee shall be under no obligation to institute any such suit, or to take any proceedings under this indenture, until it shall be indemnified to its satisfaction for all expenses and costs of every kind, and also for all possible claims or damages.

Should any suit or other proceeding be brought against the trustee by reason of any matter or thing, connected with the trusts hereby created, or by reason of its being such trustee, it shall be under no obligation to enter any appearance by counsel, or in any way appear in and defend the said suit, or other proceeding, until indemnified to its satisfaction for so doing; but it may, nevertheless, appear and defend the same with indemnity, if it shall elect so to do, and in each case it shall be compensated therefor from the trust fund.

In case at any time it shall be necessary or proper for the trustee to make any investigation, respecting any facts, preparatory to taking or not taking any action, or doing anything as such trustee, the certificate of the party of the first part, under its corporate seal, attested by the signature of its president or treasurer, and the affidavit of one or more directors, shall be sufficient evidence of such fact to protect the trustee in any action that it may take by reason of the supposed existence of such fact.

29 It shall be no part of the duty of the party of the second part to see to the recording of this indenture, as a conveyance of real estate, or to the filing thereof, as a chattel mortgage, or renewing such mortgage, or to do any act which may be suitable and proper to be done for the continuing of the lien of this indenture, or for giving notice of the existence of such lien; nor shall it be any part of its duty to effect insurance against fire or other damage, or any portion of the property or to renew any policies of insurance.

The trustee shall only be responsible for reasonable diligence in the performance of the trust, and shall not be answerable, in any case, for the act or default of any agent, attorney or employee selected with reasonable discretion.

The trustee shall be entitled to be reimbursed for all proper outlays of every sort or nature by it incurred in the discharge of its trust, and to receive a reasonable and proper compensation for any duties that it may at any time perform in the discharge of the same; and all such fees, commissions, compensations and disbursements shall constitute a lien on the mortgaged property and premises, prior to the lien of this indenture.

The recitals herein contained are made on behalf of the party of the first part, and the party of the second part assumes no responsibility as to the correctness of the statement herein contained.

It is understood and agreed that the recitals of the vote of the stockholders of the party of the first part, hereinbefore written, relating to the manner of issuing said bonds are to be considered a part of this deed and are to control the parties hereto in making and disposing of said bonds.

11. In case the trustee shall at any time desire to be discharged from, or decline, or shall become incapable, or for any reason unfit to act in the trusts of these presents, or in case for any cause, said trusteeship shall become vacant, then and in every such case, and so often as the same shall happen, the supreme court of Massachusetts, or any judge thereof, may upon the application of said trustee, or trustees, or holders of one-third in amount of said bonds, then outstanding and unpaid, appoint a new trustee or trustees, in its, his, or their place, and so often as any new trustee or trustees, hereof shall be appointed either in the manner provided, or in any lawful manner, all the estate, property, rights and powers which shall for the time being be held upon the trusts hereof, shall thereupon be vested in the new trustee, or trustees.

12. The party of the first part reserves the right to pay the bondholders the principal due upon each bond, and have the same surrendered and cancelled at any time after one year from its date and prior to the maturity of the bond upon the following conditions: In case this right is exercised a notice of the intention of the party of the first part so to do shall be given by sixty days' notice to the bondholders by mail to those whose address is known, by said party of the first part, also by publishing the same once a week, for four consecutive weeks, in any newspaper published at Fort Payne, Alabama, and in the Boston Journal, a newspaper published in Boston, Massachusetts; the first notice in each of said papers to be sixty days prior to the date of exercising said rights. After such notice has been given the party of the first part shall have the right to pay said bonds and accrued interest and be entitled to receive the surrender of the bonds and all coupons by paying to each bondholder a premium or bonus of 5 per cent. of the principal of each bond, and it is fully understood and agreed that interest shall cease on all bonds not surrendered for payment, in case the notice provided above is given, from and after the date named in the notice when said party of the first part, has elected to pay the bonds, premium and interest.

13. It is hereby further covenanted and agreed by and between the parties hereto, that if the party of the first part shall well and truly pay all sums of money herein required to be paid by it, and all interest thereon, at the time and in the manner specified herein, and shall well and truly keep and perform all the covenants and agreements herein required to be kept and performed by it, according to the true intent and meaning of these presents, then and in

that case, the right, title and interest of the trustee in the
31 property hereby conveyed, shall cease, determine and become void; otherwise the same shall remain in full force and virtue.

14. Whenever in this indenture the words, "the trustee," or the words, "said trustee," are used, they are understood to refer to the party of the second part, or its successor or successors in the trust hereby created; and the words, "said coal and iron company" are to be understood, as meaning the party of the first part.

15. The party of the second part hereby accepts the trust created by these presents.

In witness whereof, the said Fort Payne Coal & Iron Company, party of the first part, has caused its corporate seal to be hereto affixed, and these presents to be signed, in its name and behalf by its president and treasurer; and the Old Colony Trust Company, the party of the second part, in testimony of its acceptance of the trust hereby created, has caused its corporate seal to be hereto affixed, and these presents to be signed in its name and behalf by its president, the day and year first above written.

Signed, sealed and delivered in presence of—

[Company Seal.]

G. H. MERRIMAN,
To Fort Payne Coal & Iron Company.
FORT PAYNE COAL & IRON COMPANY,
By J. W. SPAULDING, *President.*
By F. H. TOBEY, *Treasurer.*
OLD COLONY TRUST COMPANY, *Trustee,*
By T. JEFFERSON COOLIDGE, JR., *President.*

Attest—C. S. TUCKERMAN, *Secretary.*

STATE OF ALABAMA, }
De Kalb County. }

I, W. P. Hemphill, a notary public in and for said county, hereby certify that J. W. Spaulding, as president of the Fort Payne Coal & Iron Company, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he exe-
32 cuted the same voluntarily on the day the same bears date in behalf of said company.

Given under my hand and seal this twenty-fifth day of February, A. D. 1891.

[N. P. SEAL.] W. P. HEMPHILL,
Notary Public.

Endorsed—Received in clerk's office and filed August 6, 1892. N. W. Trimble, clerk.

Order Appointing Receiver and for Issuance of Temporary Injunction and Rule Nisi.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

In chamber- August 4, 1892.

On the filing of this bill, it is considered, ordered and adjudged by the court that upon the filing of a bond in the sum of $10,000, with sureties approved by the clerk, conditioned for the faithful performance of his duties, W. K. Sheldon, of Fort Payne, Alabama, be and he is hereby appointed temporary receiver of the Fort Payne Coal and Iron Company with authority to enter and take possession of all and singular the properties, real and personal, choses in action, of all kinds whatsoever and wherever to be found, belonging to said company, and them safely keep, *perfect* and preserve until the further order of this court, and the clerk will issue order to the Fort Payne Coal and Iron Company returnable at Birmingham, Ala. on the first Monday in September, 1892, to show cause, if any, why the temporary receiver should not be made permanent or succeeded by a permanent receiver.

It is further ordered and adjudged, and the clerk will issue the proper order, restraining the several defendants A. B. Green, A. J. Butler, Citizens' Bank and Trust Company, G. N. Henson, their agents and attorneys, and all other creditors of the Fort Payne Coal and Iron Company, or other persons having possession of any of the bonds of said company, or any of its property, assets or effects from disposing of the same, said orders being returnable at
33 Birmingham, Ala., on the first Monday in September, 1892, when cause may be shown why they should be dissolved or continued.

Received and filed this August 6, 1892.

JOHN BRUCE, *Judge.*
N. W. TRIMBLE, *Clerk.*

Temporary Injunction.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

The President of the United States of America to A. B. Green, A. J. Butler, citizens of Fort Payne, Alabama, the Citizens' Bank and Trust Company, a corporation of Tennessee, and G. N. Henson, a citizen of Chattanooga, Tennessee, their agents and attorneys and all other creditors of the Fort Payne Coal and Iron Company, etc.:

Whereas A. L. Sayles *et als.* have exhibited their bill of complaint in the circuit court of the United States for the southern division of the northern district of Alabama, against the Fort Payne Coal and Iron Company, Old Colony Trust Company, A. B. Green, A. J. But-

ler, Citizens' Bank and Trust Company, and G. N. Henson, praying among other things for the writ of injunction to issue restraining and enjoining said defendants, and each and every of them, their agents and attorneys, and all other creditors of the said Fort Payne Coal and Iron Company from disposing of by execution or otherwise any of the property or assets of said insolvent corporation (Ft. Payne Coal and Iron Co.) and also restraining all persons whomsoever from maintaining or prosecuting any separate proceeding or writ against the said corporation within the jurisdiction of this court, and requiring all creditors to come in and prosecute their several demands in and under this proceeding, and

Whereas, an order has been made by the Hon. John Bruce, one of the judges of this court, directing the clerk to issue the proper orders restraining the several defendants, A. B. Green, A. J. Butler, Citizens' Bank and Trust Company, G. N. Henson, their agents and attorneys, and all other creditors of the Fort Payne Coal and Iron
34 Company, or other persons having possession of any of the bonds of said company, or any of its property, assets or effects, from disposing of the same, said orders being returnable at Birmingham, Ala., also, on the first Monday in September, 1892, when cause may be shown why they should be dissolved or continued.

Now, therefore, we do strictly command you, the said A. B. Green, A. J. Butler, Citizens' Bank and Trust Company and G. N. Henson, your agents and attorneys, and all other creditors of the Fort Payne Coal and Iron Company and all other persons having possession of any of the bonds of said company, or any of its property, assets or effects, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith and until the further order, judgment and decree of this court desist from, and you are hereby enjoined and restrained from in any manner disposing of any of the bonds of the said Fort Payne Coal and Iron Company, or any of its property, assets or effects of said Fort Payne Coal and Iron Company. And

We further command you and each of you that you do show cause, if any there be, before this court, at Birmingham, Ala., on or before the first Monday of September, 1892, why this writ should be dissolved or continued.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, this the sixth day of August, A. D. 1892.

Issued August 6, 1892.

N. W. TRIMBLE, *Clerk.*

Endorsed: A. L. Sayles *vs.* Fort Payne Coal and Iron Co. Temporary injunction. Issued Aug. 6, 1892.

Further endorsed thereon: Executed this 8th day of Aug., 1892, by delivering a copy to A. J. Butler and by leaving a copy at the residence of A. B. Green with his wife, at Fort Payne, Ala. A. R. Nininger, U. S. marshal. By J. W. Bruce, deputy.

Endorsed further thereon: Returned and filed Aug. 8, 1892. N. W. Trimble, clerk.

35 *Rule Nisi.*

Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL & IRON CO. *et als.* } In Equity.

To the Fort Payne Coal and Iron Company, a corporation organized under the laws of the State of Alabama, and located and having its principal office in the city of Fort Payne, De Kalb county, Alabama:

You will please take notice that in pursuance of an order made at chambers on August 4th, 1892, in the above-entitled cause, by the Hon. John Bruce, one of the judges of the aforesaid circuit court, of which order the following is a true and correct extract, to wit:

In chambers, August 4th, 1892.

On the filing of the bill it is considered, ordered and adjudged by the court that upon the filing of a bond in the sum of $10,000, with sureties approved by the clerk, conditioned for the faithful performance of his duties, W. K. Sheldon, of Fort Payne, Alabama, be and he is hereby appointed temporary receiver of the Fort Payne Coal and Iron Company, with authority to enter and take possession of all and singular the properties, real and personal, choses in action, of all kinds whatsoever and wheresoever to be found, belonging to said company, and them safely keep, protect and preserve, until the further order of this court, and the clerk will issue order to the Fort Payne Coal and Iron Company returnable at Birmingham, Alabama, on the first Monday in September, 1892, to show cause, if any, why the temporary receiver should not be made permanent, or succeeded by a permanent receiver.

You will likewise take notice that the bill in the above-noted cause (referred to in the above order) has been regularly and duly filed in the clerk's office of the aforesaid court, and that the bond required by said order has on this 6th day of August, 1892, been duly executed by said W. K. Sheldon, as temporary receiver, with sufficient sureties as required in and by said order, and that said bond has been duly approved by me as clerk and filed in my office.

36 Now, therefore you are hereby commanded and directed to show cause, if any there be, on or before the first Monday of September, 1892, before the said circuit court at Birmingham, Ala., why the temporary receiver, W. K. Sheldon, should not be made permanent, or succeeded by a permanent receiver.

Witness the Hon. Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, and the seal of the said circuit court this the 6th day of August, A. D. 1892.

Issued August 6, 1892.

[SEAL.] N. W. TRIMBLE,
Clerk United States Circuit Court, Northern District Alabama, Southern Division.

Received in the United States marshal's office, August 6, 1892.
A. R. NININGER,
U. S. Marshal.

Executed August 8, 1892, by delivering a copy to W. T. Dunn, secretary and treasurer of Fort Payne Coal and Iron Company, at the company's office at Fort Payne, Ala.

Costs $2.

A. R. NININGER,
U. S. Marshal,
By J. W. BRUCE, *Deputy.*

Returned and filed August 8, 1892.
N. W. TRIMBLE, *Clerk.*

Subpœna in Equity.

The President of the United States of America to the marshal for the northern district of Alabama, Greeting:

You are hereby commanded to summon the Fort Payne Coal and Iron Company, A. B. Green and A. J. Butler, if to be found in your district, that they laying aside all excuse, appear personally at the office of the clerk of the circuit court of the northern district of the State of Alabama, southern division, in the city of Birm-
37 ingham, in said district, on the rule day, to be held on the first Monday in September (1892) next, to answer, plead or demur to the bill of complaint exhibited in said circuit court by A. L. Sayles, R. P. Kingman, Henry A. Yeaton, Charles H. Garrett, John Conlon, Benjamin Kennard, Albert E. Rand, Asa Walker, C. H. Snow, William Ward, F. R. Garrett, Asa A. Yeaton, S. Liebman, R. L. Snow, H. B. Pierce, Charles A. Eaton, Horace B. Parker and George Bilbrick and Winifred Yeaton, complainants, against Fort Payne Coal and Iron Company, Old Colony Trust Company, A. B. Green, A. J. Butler, Citizens' Bank & Trust Company, and G. N. Henson, defendants. A copy of which bill will be furnished on application to the clerk. Herein fail not and have you then and there this precent, with your return thereon endorsed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 6th day of August, in the year of our Lord one thousand eight hundred and ninety-two, and of American Independance 117th year.

Attest:

[SEAL.] N. W. TRIMBLE,
Clerk U. S. Circuit Court.

Issued 6th day of August, A. D. 1892.

MEM.—The defendants are to enter their appearances, and to file their answers or demurrers to said bill, in the clerk's office on or before the day on which this writ is returnable—otherwise a decree *pro confesso* may be entered.

The marshal is required to execute this writ twenty days before the return day thereof.

Received in marshal's office this 6th day of August, 1892.

A. R. NININGER,
U. S. Marshal.

Endorsed thereon: Executed this 8th day of August, 1892, by delivering a copy to W. T. Dunn, sec'y and treas. of Fort Payne Coal & Iron Co., at the office of the company at Fort Payne, Ala., and by delivering a copy to A. J. Butler, and by leaving a copy at the residence of A. B. Green.

38	Three copies at $2	$6 00
	R. R. fare	5 60
	Subsistence	3 00
		$14 00

A. R. NININGER,
U. S. Marshal,
By J. W. BRUCE, *Deputy.*

Endorsed further thereon: No. 56. U. S. circuit court. In chancery. A. L. Sayles *et al. vs.* Fort Payne Coal & Iron Co. *et als.* Subpœna in equity. Issued August 6, 1892. Returned and filed August 8, 1892. N. W. Trimble, clerk.

Answer to Rule Nisi.

In U. S. Circuit Court at Birmingham, Alabama. In Equity.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL & IRON CO. *et al.*

Comes the defendant, Fort Payne Coal & Iron Company, and for answer to the rule *nisi* says: That the temporary receiver heretofore appointed in this cause, should be discharged, and said defendant restored to the possession of its property, for that:

The court is without jurisdiction of this cause:

1. Because it is not shown that the parties plaintiff and defendant are citizens of different States.

2. It is not shown that the amount involved in this suit is as much as two thousand dollars.

3. While individual stockholders are parties plaintiff, the bill shows that the interest sought to be protected is the interest of the Fort Payne Coal & Iron Company, the party really interested; and said defendant being a citizen of Alabama, no suit can be main-

tained in the United States courts against a citizen of the same State, whether prosecuted in the name of said defendant, or by one or more of its stockholders to protect its interest.

39 4. There is a misjoinder of parties plaintiff in that stockholders are joined with creditors having no privity of interest in the prosecution of the suit.

The bill is without equity, because:

5. Plaintiffs have shown no capacity in themselves to maintain this suit, if any exist being to the interest of the defendant Fort Payne Coal and Iron Company, and not to the plaintiffs.

6. The bill does not show that the creditors, who join as plaintiffs have reduced their claims to judgments, or that the defendant, Fort Payne Coal and Iron Company is insolvent, or that it has fraud-lantly conveyed its property or fraud-lantly withholds the same from the payment of its debts.

7. The bill shows that the creditors who joined as plaintiffs have a clear and adequate remedy at law.

8. The bill does not show that plaintiffs, who are stockholders, owned their stock at the time of the occurrence of the acts complained of, or that their shares have devolved on them since by operation of law.

9. The amount involved in this suit is so small, compared with the value of the property of the company, that it would be inequitable and unjust to continue the receivership whereby the defendant would be deprived of the possession and the income and profits of its property pending litigation.

10. The bill shows that the minority stockholders and bondholders are dissatisfied with the management of the affairs of the corporation, and without seeking redress from the corporation itself, they apply to the court to take the management of the corporation out of the control of the majority, without alleging any *ultra vires* act, or fraud-lant act of the officers or directors of the corporation, and without making any of the officers or directors, whose acts and omissions are complained of, parties to their bill.

11. Minority stockholders and bondholders have no right to dissolve a corporation and distribute its assets as its attempted by the bill; and furthermore, this defendant, The Fort Payne Coal and Iron Company, says that the assets of said company are largely in excess of its liabilities, and that the mortgaged property is worth largely more than the amount of the mortgage debts.

40 Wherefore, and for the reasons aforesaid, the Fort Payne Coal & Iron Company prays a discharge of the temporary receiver heretofore appointed, and moves the court to dismiss the bill for want of equity.

SMITH & LOWE,
SPAULDING & PARKS,
Solicitors for Fort Payne Coal & Iron Co.

Endorsed—Filed September 5, 1892. N. W. Trimble, clerk. Refiled to bill as amended September 12, 1892. N. W, Trimble, clerk.

Motion to Dismiss Bill.

In U. S. Circuit Court at Birmingham.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL & IRON COMPANY. } In Equity.

Now comes the defendant Fort Payne Coal & Iron Company and moves the court to dismiss the bill, because the court has no jurisdiction to hear and determine this cause.

SPAULDING & PARKS,
SMITH & LOWE,
Solicitors Fort Payne Coal & Iron Co.

Filed September 7, 1892.

N. W. TRIMBLE, *Clerk.*

Motion to Dismiss Bill.

In the U. S. Circuit Court at Birmingham.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL & IRON COMPANY. } In Equity.

Now comes the defendant, Fort Payne Coal & Iron Company and moves *to* the court to dismiss the plaintiffs' bill, because the
41 said bill does not contain any matter of equity, whereupon this court can ground any decree or give to the plaintiffs any relief against this defendant.

SPAULDING & PARKS,
SMITH & LOWE,
Solicitors Fort Payne Coal & Iron Co.

Filed September 7, 1892.

N. W. TRIMBLE, *Clerk.*

Order Allowing Amendments to Bill.

In the United States Circuit Court for the Southern Division of the Northern District of Alabama.

Minute entry from Min. Book C. John Bruce, judge presiding. September 12, 1892.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON CO. *et al.* } In Equity.

This cause coming on to be heard upon the motion of the complainants for leave to amend their bill of complaint, and after being argued by counsel *pro* and *con* and duly considered by the court, it is ordered, adjudged and decreed that said motion be and the same is hereby granted.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON CO. *et al.*

By leave of the court first had and obtained the answer of the defendant The Fort Payne Coal and Iron Company heretofore filed to the rule *nisi* in this cause, is allowed to be refiled to the bill as amended.

Minute entry from Min. Book C. September 15, 1892. John Bruce, judge presiding.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON CO. *et al.*

This cause coming on to be heard upon the rule to show cause why the temporary receiver heretofore appointed should not
42 be made permanent or succeeded by a permanent receiver, and after being argued by counsel *pro* and *con*, was submitted to the court for its consideration.

Amendments to Bill.

In the Circuit Court of the United States, Southern Division of the Northern District of Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

To the judges of said court:

Your orators pray that they be permitted to make the following amendments, corrections and additions to their bill of complaint:

1. In paragraph one of the bill it is stated that W. P. Rice was elected first president of the Fort Payne Coal and Iron Company, whereas it should have been stated that J. W. Spaulding was, said Spaulding holding the office for two years.

2. Paragraph six is corrected as follows: The note for the money loaned by A. B. Green, a director of the company, was executed by W. P. Rice, president of the company, to A. J. Butler, trustee, of Fort Payne, Alabama, and an employee of the company and by said Butler endorsed to Green, for the sum of $5,000 payable in ten days after date, with privilege to sell the collateral after three days' advertisement, that the collateral was sold according to the conditions of the note and purchased by said Green or his agent for the sum of $3,000, that the money actually loaned by Green to the company in this transaction was $4,750.

3. Your orators further show that the present board of directors of the Fort Payne Coal and Iron Company is composed of the following persons: Horatio Adams, Kingston, Massachusetts and Edwin Stone, Biddeford, Maine, neither of whom have been to Fort

Payne since the incoming, on March 23d or thereabouts, of the present directory, but once, and then for a brief stay; F. H. Tobey, whose nominal residence is Fort Payne, but who has been absent the entire time since his election except for a few days; J. O.
43 Carr, of Fort Payne, who has been absent in New Hampshire for the past two months; W. P. Rice, F. B. Doe, A. B. Green, W. T. Dunn, and M. W. Howard, all of Fort Payne; that a majority of the directors reside in Fort Payne, and for the most part are men of no or small means; that Carr, Dunn and Doe are young men who came to Fort Payne at the beginning of the development there; that Howard is a young lawyer whose home has been for a long time at Fort Payne, and that Green is an old resident of Fort Payne and a man of large property; that the meetings of the directors have been frequent, and the said Fort Payne directors were cognizant of the affairs of the company and the doings of its officers and the many acts of waste and dissipation of the assets of the company, set out in the original and the amended bill, yet have concurred in and upheld and approved those doings to the great detriment, waste and injury of the company's property; that the directors are dominated by the officers of the company, and having concurred in their many acts of waste, it would be futile to rely on them to protect the company against such acts; that of the Fort Payne directors M. W. Howard, A. B. Green and W. P. Rice own one share each of stock in the coal and iron company, and these they obtained solely to qualify as directors, F. B. Doe owns no share at all as appears from the stock list, W. T. Dunn owns five shares and J. O. Carr twenty shares, F. H. Tobey owns one share, Edwin Stone one hundred and fifty shares, and Horatio Adams seventy-three shares.

4. The original board of directors was composed of J. W. Spaulding, of Portland, Maine; Hon. D. H. Goodell, governor of New Hampshire; Hon. H. B. Peirce, secretary of state of Massachusetts; ex-Governor Seldon Connor, of Maine; Jillson, of Rhode Island; —— Boddie, W. J. Cameron, of Birmingham, Ala.; W. R. Rice and J. H. Ford, of Kansas City. The office of president for the year preceding the present management was filled by ex-Governor Goodell of New Hampshire.

5. The blank space in paragraph fourteen of the bill should have inserted therein the figures $500.

6. That on August 1, 1892, complainants made demand upon the Old Colony Trust Company to take steps to protect the right
44 of complainants under the mortgage, and that the said company refused to take steps to foreclose the mortgage, nor has it done any other act which it was lawfully empowered to do, whereby the conveyed premises could have — protected notwithstanding the Fort Payne Coal and Iron Company has failed for six months and more to operate the conveyed properties, as railroad and mines, and despite the waste of personal assets, which was continually diminishing the value of the conveyed premises, to the great detriment and destruction of the interest of both stock and bond holders.

7. Your orators further show that on August 2, 1892, the coal and iron company, for the consideration of four lots of land in Fort Payne, worth scarcely twenty-five dollars each, released J. W. Spaulding, counsel of the company, and A. W. Train from an indebtedness of $8,338.55, given as purchase price for said land in December, 1889, by said Spaulding and Train, which said transaction was a waste of the assets of the company.

8. Your orators further show that on May 12, 1892, the Fort Payne Coal and Iron Company, for the consideration of a certain lot in Fort Payne, forty feet frontage, released W. W. and J. V. Haralson from an indebtedness of nearly $4,500; the lot is not worth to-day, nor was at the time of the transaction, $100 and the company's assets were endamaged and wasted thereby.

9. Your orators further show that W. T. Dunn, secretary and treasurer, and a director of the Fort Payne Coal and Iron Company, delivered to W. P. Rice, president, $900 of the bonds of the said company; that the said Rice denies the possession thereof, and that the company has received no consideration therefor.

10. The complainants who are stockholders were such at the time of the transactions complained of, and are now, and have not colluded to confer jurisdiction of this case upon the circuit court of the United States.

11. Your orators, at the time of filing this suit, were and are residents and citizens of the States and places affixed below next to their respective names. A. L. Sayles, Pascoag, Rhode Island; R. P. Kingman, Brockton, Massachusetts; Henry A. Yeaton, Charles H. Garrett, John Conlon, Portsmouth, New Hampshire; Benja-
45 mine Kennard, Eliot, Maine; A. E. Rand, Asa Walker, C. H. Snow, R. L. Snow, William Ward, F. R. Garrett, Asa A. Yeaton, S. Liebman, Winifred Yeaton, Portsmouth, New Hampshire; Henry B. Pierce, Addington, Massachusetts; Horace B. Parker, New Hampshire; Charles A. Eaton, Brockton, Massachusetts; George Bilbrick, New Hampshire.

The defendant Fort Payne Coal and Iron Company, at the filing of this suit, was and is a corporation, citizen and resident of Alabama, the Old Colony Trust Company a corporation, citizen and resident of Massachusetts, A. B. Green and A. J. Butler citizen- and residents of Fort Payne, Alabama, the Citizens' Bank and Trust Company a corporation, citizen and resident of Chattanooga, Tennessee, and G. N. Henson, a citizen and resident of Chattanooga, Tennessee.

CHARLES TURNER,
JAS. NORFLEET,
Solicitors for Complainants.

Jas. Norfleet being duly sworn says that the facts set forth in the foregoing amended bill are of his own knowledge true except those set forth on information and belief and as to those he believes them to be true.

JAS. NORFLEET.

Endorsed thereon—Filed September 12, 1892. N. W. Trimble, clerk.

Amendment to Bill.

In the Circuit Court of the United States, Southern Division of the Northern District of Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL & IRON COMPANY *et al.*

Come the following-named bondholders and stockholders of the Fort Payne Coal and Iron Company, and creditors thereof, who say that they are the owners of the amount of stock and bonds set opposite their names and were at the filing of this suit and the time of the transactions complained of, or creditors to the amounts set opposite their names, of the Fort Payne Coal and Iron Com-
46 pany, of Fort Payne, Alabama; that the par value of said stock is $100 per share, that the interest on their holdings of bonds *were* due March 1 and September 1, 1892, and *are* unpaid, and that at the filing of this suit they were and are citizens and residents of the States and places affixed next below to each of their respective names, and they ask that they be permitted to become parties complainant to the bill filed herein and share the benefits thereof. They further say they have not colluded to confer jurisdiction of this case upon the United States circuit court.

A. A. Thompson, a citizen and resident of Raleigh, N. C., who has judgment against the Fort Payne Coal and Iron Company for the sum of $460.50, as appears by the certificate hereto attached of the clerk of the circuit court of Alabama, for De Kalb county.

Oliver Ames, of the State of Massachusetts, bonds, $5,000, who is a creditor also in the sum of $10,000, due and unpaid, and secured by $15,000 of bonds of the Fort Payne Coal and Iron Company.

	Shares.	Bonds.
E. T. Bartram, Bridgeport, Conn.	800	$10,500
L. A. McMurry, Webster City, Ia.	200	
State Bank of Renwick, Ia.	100	
Jacob M. Fuuk, Webster, Ia.	50	
Albert Culver, Rockland, Mass.	10	500
Charles A. Grant, Boston, Mass.	---	2,000
A. C. Judkins, Boston, Mass.	50	1,000
Richard Hodgson, Stoneham, Mass.	87	300
Horace Low, Cambridge, Mass.	31	1,000
E. J. Fletcher, Brockton, Mass.	65	2,500
Lucia A. Rand, Middletown, Conn.	27	2,500
Mrs. George S. Smith, Charlestown, N. H.	100	
S. B. Champlin, Providence, R. I.	200	2,000
S. W. Shorey, Boston, Mass.	40	2,200
Frank T. Dwinnell, Boston, Mass.	50	1,800
George S. Smith, North Charleston, N. H.	100	1,200

		Shares.	Bonds.
George S. Smith, hypothecated bonds		---	$500
A. H. Sayes, Pascoag, R. I.		---	250
Oliver Ames, Boston, Mass.		---	20,000
	Charles Russell, Boston, Mass.	60	2,000
47	B. S. Buckinster, Antrim, N. H.	20	100
	Richard Rich, Malden, Mass.	100	3,050
Robert P. Gifford, Providence, R. I.		25	500
Melvina Poor, Antrim, Mass.		8	300
J. S. Needham, West Peabody, Mass.		50	500
Preston B. Keith, Campello, Mass.		100	1,050
Andes Howes, Boston, Mass.		45	350
J. A. Cross, North Abington, Mass.		---	3,700
H. C. Greeley, Clinton, Mass.		25	500
Mary E. Graves, Wolfville, Nova Scotia		---	100
H. P. Sanford, West Randolph, Vermont		10	100
Geo. L. Haradin, West Randolph, Vermont		10	600
Harold W. Stevens, Cambridge, Mass.		55	500
Benjamin Brierly, Dover, N. H.		30	3,500
N. C. King, Campello, Mass.		---	200
Charles E. Kibbey, Antrim, N. H.		---	150
J. A. Wilder, Windsor, Vermont		18	500
Andrew C. Cushing, North Cambridge, Mass.		---	700
William H. Anderson, Lowell, Mass.		15	100
Samuel Keith, East Bridgeport, Mass.		10	200
A. E. Aldrich, West Lebanon, N. H.		75	300
Samuel Shorey, Onset or Boston, Mass.		40	2,200
Jonas Reynolds, Boston, Mass.		40	500
Ellen S. Reynolds, Boston, Mass.		40	500
George W. Vickery, Augusta, Maine		---	200
Jared A. Smith, Cleveland, Ohio		25	200
H. T. and Sarah A. Marshall, Brockton, Mass.		20	200
Dexter Butterfield, Tyngsborough, Mass.		5	400
B. F. Bartlett, Boston, Mass.		45	150
Levi Cooley, Jr., Boston, Mass.		100	2,500
W. G. Carthell, Boston, Mass.		40	600
E. F. Merriam, Boston, Mass.		10	200
Isaac Jay, Boston, Mass.		32	300
W. A. C. Oaks, Antrim, N. H.		40	200
	Zachariah Shattuck, Nashua, N. H.	150	2,000
48	Randall Richards, Abington, Mass.	---	2,000
	W. H. Burgess, Kingston, Mass.	50	1,000
Walter Steele, Stoneham, Mass.		20	100
Esthur S. Burns, Nashua, N. H.		---	500
William N. Scott, Portland, Maine		25	900
Annie V. Buffum, Providence, R. I.		25	250
Henry B. Pierce, Abington, Mass.		70	1,000
Henry B. Pierce, Abington, Col.		---	2,500
R. G. Howland, Hope, R. I.		25	500

THE STATE OF ALABAMA, }
De Kalb County, }

I, W. T. Fuller, clerk of the circuit court of said county and State, hereby certify that on the 9th day of August, 1892, A. A. Thompson, plaintiff, recovered of Fort Payne Coal and Iron Co., defendant, in the circuit court of said county, judgment for the sum of four hundred and sixty $\frac{50}{100}$ dollars, and for the further sum of fourteen $\frac{55}{100}$ dollars, costs of suit, and that T. C. Carry and A. E. Goodhue is plaintiff's attorneys of record.

Given under my hand, this 7th day of September, 1892.

W. T. FULLER, *Clerk.*

Endorsed thereon—Filed September 12, 1892. N. W. Trimble, clerk.

Motion to Dissolve Injunction.

In the United States Circuit Court at Birmingham.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

Comes the defendant The Fort Payne Coal and Iron Company, and moves the court to dissolve the injunction heretofore issued in the cause, and to discharge the receiver, upon the ground that the court has no jurisdiction of this cause, and that there is no equity in the bill, and upon the further grounds:

1. Because it is not shown that the parties plaintiff and the parties defendant are citizens of different States.

49 2. It is not shown that the amount involved in this suit is as much as two thousand dollars.

3. While individual stockholders are parties plaintiff, the bill shows that the interest sought to be protected is the interest of the Fort Payne Coal and Iron Company, the party really interested; and said defendant being a citizen of Alabama, no suit can be maintained in the United States courts against a citizen of the same State, whether prosecuted in the name of said defendant, or by one or more of its stockholders to protect its interest.

4. There is a misjoinder of parties plaintiff, in that stockholders are enjoined with creditors, having no privity of interest in the prosecution of the suit.

The bill is without equity, because:

5. Plaintiffs have shown no capacity in themselves to maintain this suit; the injury, if any exists, being to the interest of the defendant Fort Payne Coal and Iron Company, and not to the plaintiffs.

6. The bill does not show that the creditors, who joined as plaintiffs have reduced their claims to judgments, or that the defendant Fort Payne Coal and Iron Company is insolvent, or that it has fraudulently conveyed its property, or fraudulently withholds the same from the payment of its debts.

7. The bill shows that the creditors who join as plaintiffs have a clear and adequate remedy at law.

8. The bill shows that the minority stockholders and bondholders are dissatisfied with the management of the affairs of the corporation, and without seeking redress from the corporation itself, they apply to the court to take the management of the corporation out of the control of the majority, without alleging any *untra vires* act, or fraudulent act of the officers or directors of the corporation, and without making any of the officers or directors, whose acts and omissions are complained of, parties to their bill.

9. That the bill shows upon its face that the defendant is not liable to the complainants for the wrongs complained of.

10. The officers and directors of the company, whom it is alleged are guilty of the wrongful acts and omissions complained of, are not made parties to the bill.

50 11. The bill shows on its face that the Old Colony Trust Company, the trustee, has failed to exercise its discretion in favor of a proceeding to enforce the lien created by the trust deed, and fails to show that the bondholders of a majority interest of the bonds, have requested it to take any action in regard to the trust property.

12. The bill shows on its face that the relief is sought by — holders of bonds, by a sale of property covered by the trust deed, together with other property of this defendant, and as to the latter, the complaining bondholders are simple contract creditors, and are not entitled to relief in a court of equity before reducing their claims to the judgment by action at law.

13. The relief sought cannot be granted by a court of equity.

SPAULDING & PARKER,
SMITH & LOWE,
Solicitors for the Fort Payne Coal and Iron Co.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

Motion to dissolve injunction and to discharge its receiver. Filed September 15, 1892.

N. W. TRIMBLE, *Clerk.*

Order Denying Motion to Dismiss Bill.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Minute entry, September 17, 1892, John Bruce, presiding.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

This cause coming on to be heard upon the motion of the respondent Fort Payne Coal and Iron Company to dismiss the origi-

nal bill and amendment thereto, for want of the jurisdiction of this court and for want of equity therein, and after being argued
51 by counsel *pro* and *con* and duly considered by the court, it is ordered, adjudged and decreed that said motion be, and the same is hereby, denied and overruled.

Judgment and Decree on Rule Nisi.

In the Circuit Court of the United States, Southern Division of the Northern District of Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

This cause coming on to be heard upon a rule *nisi* to show cause "why the temporary receiver should not be made permanent or succeeded by a permanent receiver," and upon demurrers to the original and amended bills for want of equity and jurisdiction, after full argument.

It is ordered and adjudged that the demurrers be overruled, and the receivership of the defendant, Fort Payne Coal and Iron Company, be made permanent.

And it is further ordered and adjudged that W. K. Sheldon, of Fort Payne, Ala., be and he is hereby appointed and confirmed permanent receiver of said *of said* company, upon the filing of a bond in the sum of $25,000 *dollars*, with sureties to be approved by the clerk and conditioned for the faithful performance of his duties as receiver and the correct administration of the assets of said company, and the due performance of all orders of this court in respect thereto.

It is further ordered and adjudged that the injunctions against the defendants A. J. Butler, A. B. Green, G. N. Henover and Citizens' Bank and Trust Company and the Old Colony Trust Company, be and the same are hereby dissolved, and are continued as to all others.

It is further ordered and adjudged that the complainants recover their costs of the defendant coal and iron company. September 20, 1892.

JOHN BRUCE, *Judge.*

Filed September 20, 1892.

N. W. TRIMBLE, *Clerk.*

52 *Order Denying Motion to Dissolve Injunction.*

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Minute entry, September 20, 1892, Hon. John Bruce, judge, presiding.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON CO. *et al.*

This cause coming on to be heard upon the motion of defendant, The Fort Payne Coal and Iron Company *et al.*, to dissolve the injunction heretofore issued in this cause, and after being argued by counsel *pro* and *con* and duly considered by the court, it is ordered, adjudged and decreed that said motion be and the same is hereby denied and overruled.

Demurrer to Bill.

In the United States Circuit Court at Birmingham, Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

Comes the defendant, The Fort Payne Coal & Iron Company, and demurs to the bill of complaint in the said cause, as amended, and assigns as grounds of demurrer, the following:

The bill is without the jurisdiction of this court.

1. Because it is not shown that the parties plaintiff and the parties defendant are citizens of different States.

2. It is not shown that the amount involved in this suit is as much as $2,000.

The bill is without equity because:

3. While individual stockholders are parties plaintiff, the bill shows that the interest sought to be protected, is the interest of the Fort Payne Coal & Iron Company, the party really interested; and said defendant being a citizen of Alabama, no suit can be maintained in the United States courts against a citizen of the same
53 State, whether prosecuted in the name of said defendant, or by one or more of its stockholders to protect its interest.

4. There is a misjoinder of parties plaintiff, in that, stockholders are joined with creditors, having no privity of interest in the prosecution of the suit. The bill is without equity:

5. Plaintiffs have shown no capacity in themselves to maintain this suit; the injury, if any exist, being to the interest of the defendant Fort Payne Coal & Iron Company, and not to the plaintiffs.

6. The bill does not show that the creditors, who joined as plaintiffs, have reduced their claims to judgments, or that the defendant, Fort

Payne Coal and Iron Company, is insolvent, or that it has fraudulently conveyed its property or fraudulently withholds the same from the payment of its debts.

7. The bill shows that the creditors who joined as plaintiffs have a clear and adequate remedy at law.

8. The bill shows that the minority stockholders and bondholders are dissatisfied with the management of affairs of the corporation, and without seeking redress from the corporation itself, they apply to the court to take the management of the corporation out of the control of the majority, without alleging any *ultra vires* act, or fraudulent act of the officers or directors of the corporation, and without making any of the officers or directors, whose acts and omissions are complained of, parties to their bill.

9. That the bill shows upon its face, that the defendant is not liable to the complainants for the wrongs complained of.

10. The officers and directors of the defendant company, whom it is alleged are guilty of the wrongful acts and omissions complained of, are not made parties to the bill.

11. The bill shows on its face that the Old Colony Trust Co., the trustee, has failed to exercise its discretion in favor of a proceeding to enforce the lien created by the trust deed and fails to show that the bondholders of a majority interest of the bonds, have requested it to take any action in regard to the trust property.

54 12. The bill shows on its face that the relief is sought by holders of bonds, by a sale of property of this defendant, and as to the latter, the complaining bondholders are simple contract creditors, and are not entitled to relief in a court of equity, before reducing their claims to judgment by action at law.

13. The relief sought cannot be granted by a court of equity.

SPAULDING & PARKS,
SMITH & LOWE,
Solicitors for the Fort Payne C. and I. Co.

We hereby certify that in our opinion the foregoing demurrers to the bill in the above-stated cause, are well taken, and are not interposed for delay.

SPAULDING & PARKS,
SMITH & LOWE,
Solicitors for the Fort Payne Coal and Iron Co.

Endorsed thereon—Filed Sept. 28, 1892. N. W. Trimble, clerk.

Order Overruling Demurrer, etc.

In the Circuit Court of the United States in and for the Southern Division of the Northern District of Alabama.

A. L. SAYLES *et al.*
versus
THE FORT PAYNE COAL AND IRON CO. *et al.* } In Equity.

This cause coming on for further hearing at this term was submitted upon the demurrer filed by the defendant, The Fort Payne

Coal and Iron Co. to the bill of complaint as amended, and upon consideration thereof the court is of opinion that said demurrer is not well taken. It is therefore ordered, adjudged and decreed that the said demurrers be and the same hereby are overruled at the costs of said respondents, and lieve being asked, and complainants consenting, it is ordered that the respondent The Fort Payne
55 Coal and Iron Company be allowed thirty days from the date hereof within which to file answer to said bill of complaint.

JOHN BRUCE, *Judge.*

Birmingham, October 5, 1892.

Filed October 5, 1892.

N. W. TRIMBLE, *Clerk.*

Petition and Order for Appeal.

The honorable, the judges of the United States circuit court, for the northern district of Alabama:

The Fort Payne Coal and Iron Company respectfully shows to your honor-, that on to wit, the 6th day of August, 1892, an injunction was issued in vacation against petitioners, by Hon. John Bruce, judge of the district court of the United States for the northern district of Alabama in the cause pending in the circuit court of the United States for the southern division of the northern district of Alabama on the equity docket, of A. L. Sayle *et al. vs.* Fort Payne Coal and Iron Company *et als.*, and that on to wit the 20th day of September, 1892, in term time, said court Hon. John Bruce presiding rendered a decree or judgment continuing said injunction as against this peti-oner. And your petitioner comes now by and through its solicitors, Messrs. Spaulding & Parks and Smith & Lowe, and prays an appeal from said decree continuing the said injunction, as provided by section 7, of act creating the court, to the United States circuit court of appeals, for the fifth circuit; the only ground of jurisdiction of this court, being the alleged citizenship of plaintiffs in different States to the citizenship of defendants. Said appeal to be submitted to the said court of appeals upon the following assignment- of error, which petitioner is advised are well taken, viz.:

Comes appellant and says there is manifest error in the record and proceedin-s of the circuit court for the southern division of the northern district of Alabama, resulting in injury to the appellant, for that:

1. The said circuit court erred in its decree continuing the injunction in said cause.

2. The said court erred in taking jurisdiction of said cause.

56 3. The said court erred in overruling petitioner's motion to dissolve the injunction, and to discharge the receiver.

Wherefore, petitioners prays judgment, and that said decree be reversed and that justice may be done petitioner in the premises.

SPAULDING & PARKS,
SMITH & LOWE,
Solicitors for Petitioners.

This appeal is allowed upon petitioner giving security that the Fort Payne Coal and Iron Company will prosecute its appeal to effect, and if it fails to make good its plea, will pay all costs of appeal; but proceedings in said cause will not be suspended during such appeal.

This 23d day of September, 1892.

JOHN BRUCE, *Judge.*

Filed September 23d, 1892.

N. W. TRIMBLE, *Clerk.*

Security for Costs on Appeal.

In the United States Circuit Court, Southern Division, Northern District of Alabama.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON CO. *et als.*

We the undersigned acknowledge ourselves security that the Fort Payne Coal and Iron Company will prosecute its appeal taken to the United States circuit court of appeals for the 5th circuit to effect; said appeal taken from an interlocutory decree entered in the above-stated cause on September 20, 1892, containing in force the injunction heretofore issued in said cause; and if appellant fails to make good its plea, we will answer all costs of said appeal.

FORT PAYNE COAL AND IRON CO.,
[L. S.] By W. P. RICE, *President.*
[L. S.] W. P. RICE.
[L. S.] A. B. GREEN.

Approved this 23d day of September, 1892.

JOHN BRUCE, *Judge.*

57 Endorsed thereon—Filed September 23, 1892. N. W. Trimble, clerk.

Order on Minutes Allowing Appeal.

A. L. SAYLES *et al.*
versus
FORT PAYNE COAL AND IRON COMPANY *et al.*

The defendant, Fort Payne Coal and Iron Company, having given bond for costs of appeal, as required by law, is, upon motion made in open court, allowed *allowed* an appeal from the decree rendered in said cause continuing in force the injunction heretofore issued in said cause. Said appeal taken to the United States circuit court of appeals for the fifth circuit, and returnable on October 22, 1892.

Endorsed thereon—Filed September 28, 1892. N. W. Trimble, clerk.

UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

I, N. W. Trimble, clerk of the circuit court of the United States of America, in and for said division of said district, do hereby certify that the foregoing is a true, full and complete copy of transcript of the bill in equity, injunction, rule *nisi* and all proceedings relating thereto in the case of A. L. Sayles *et als. vs.* Fort Payne Coal and Iron Company, *et als.*, as fully as the same does appear of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Birmingham, in said district, this 20th day of October, 1892.

[SEAL.] N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Northern District, Alabama, Southern Division.

58 And afterwards, to wit, upon the 14th day of December, 1892, the following proceedings were had:

FORT PAYNE COAL & IRON CO., Appellant,
v.
A. L. SAYLES *et als.*, Appellees.

This cause came on to be heard this day and the appellees' motion to dismiss the appeal herein, and upon the merits and after argument of J. A. Smith, Esq., for appellant, and James Norfleet, Esq., for appellees, and in reply by George D. Parks, Esq., for appellant, was submitted to the court and briefs of counsel.

And afterwards, to wit, on the 16th day of January, 1893, the following decree was rendered in said cause, to wit:

FORT PAYNE COAL & IRON CO., Appellant,
v.
A. L. SAYLES *et als.*, Appellees.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Alabama, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of said circuit court in this cause be, and the same is hereby, affirmed.

It is further adjudged and decreed that The Fort Payne Coal & Iron Company, the appellant herein, and W. P. Rice and A. B. Green, sureties on the appeal bond herein, be condemned to pay the costs of this cause in this court for which execution may be issued out of said circuit court.

59 *Opinion of the Court.*

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1892.

FORT PAYNE COAL & IRON CO., Appellant,
v.
A. L. SAYLES *et als.*, Appellees. } No. 85.

Appeal from the circuit court of the United States for the northern district of Alabama.

Before Pardee and McCormick, circuit judges, and Locke, district judge.

MCCORMICK, *Circuit Judge*, delivered the opinion of the court:

In this case we do not deem it necessary to discuss the various questions made on this appeal. A careful examination of the case satisfies us that as between the bondholders, who joined in and seek relief by the bill, and The Fort Payne Coal & Iron Company, appellant, the bill presents a case of which the circuit court had jurisdiction and such equities as warranted the court to intervene for the preservation of the trust property and grant preliminary relief by injunction as well as by the appointment of a receiver.

The order appealed from should be affirmed and the cost of appeal adjudged against the appellant.

And it is so ordered.

60 I, James M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing sixty pages, numbered from page 0 to 59, inclusive, contain a true copy of the record, bill of exceptions, assignments of errors, and of all proceedings in the case of The Fort Payne Coal & Iron Company, appellant, *vs.* A. L. Sayles *et als.*, appellees, No. 85, November term, 1892, as the same remains upon the files and records of said United States circuit court of appeals, except a motion of the appellees to dismiss the appeal, which has been lost and cannot be found after diligent search.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 4th day of March, A. D. 1893.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.